



WISHTOYO VENTURA COASTKEEPER

Wishtoyo Foundation and its Ventura Coastkeeper Program
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October 23, 2012

VIA CERTIFIED MAIL

GenOn Energy, Inc.
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn Asset Management, LLC
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn Energy Management, LLC
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn Power Generation Assets, LLC
Attn: Managing Agent
1000 Main Street, 21st Floor
Houston, TX 77002

GenOn West, LP
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn Americas, Inc.
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn California North, LLC
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn Energy Services, LLC
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

GenOn West GP, LLC
Attn: Managing Agent
1000 Main Street
Houston, TX 77002

VIA U.S. MAIL

Registered Agent for
GenOn Energy, Inc.
Corporation Service Company Which Will Do Business in California as CSC - Lawyers
Incorporating Service
2710 Gateway Oaks Dr. STE 150N
Sacramento, CA 95833

Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom It May Concern:

In our notice letter dated August 22, 2012 ("August 22 Notice"), Wishtoyo Foundation and its Ventura Coastkeeper program ("Ventura Coastkeeper" or "Coastkeeper") notified GenOn Energy, Inc.; GenOn Asset Management, LLC; GenOn Energy Management, LLC; GenOn Power Generation Assets, LLC; GenOn West, LP; GenOn Americas, Inc.; GenOn California North, LLC; GenOn Energy Services, LLC; GenOn West GP, LLC (hereinafter collectively referred to as "GenOn Facility Owners and/or Operators" or "GenOn"), the registered agent(s), responsible owners, officers, and/or operators of the GenOn facility located at 6635 South Edison Drive, Oxnard, California 93033 (hereinafter "GenOn Facility" or "Facility"), regarding violations of the Clean Water Act ("CWA")¹, the State of California's General Industrial Storm Water Permit ("Storm Water Permit")², and the California Ocean Plan³ occurring at the Facility. This letter supplements the August 22 Notice with respect to CWA, Storm Water Permit, and Ocean Plan violations committed by the GenOn Owners and/or Operators at the Facility pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365 by providing notice of supplemental violations based on information obtained and learned by Ventura Coastkeeper after August 22, 2012.

As stated in the August 22 Notice, based information available to Ventura Coastkeeper on August 22, 2012, the GenOn Owners and/or Operators are not complying with the substantive and procedural requirements of the CWA, Storm Water Permit, and Ocean Plan. Specifically, GenOn Owners and/or Operators: 1.) have discharged and continue to discharge storm water containing pollutants, including iron and Total Suspended Solids ("TSS"), at levels in violation of Receiving Water Limitations (C)(1) and C(2) of the Storm Water Permit during every significant rain event occurring since at least August 2007; 2.) have discharged or continue to discharge polluted storm water with elevated levels of iron, TSS, and pH from the Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit during every significant rain event occurring since at least August 2007; 3.) have operated and are operating the Facility with an inadequately developed and/or implemented Storm Water Pollution Prevention Plan ("SWPPP") in violation of Sections A(3) through A(10) of the Storm Water Permit since at least August 2007; and 4.) have operated and are operating the Facility with an inadequately developed and/or implemented Monitoring and Reporting Program ("MRP") in violation of Sections B(3) through B(16) of the Storm Water Permit since at least August 2007. In addition, the GenOn Facility is discharging wastes including, but not limited to, pollutants from the Facility such as iron and TSS into and near the Mugu to Latigo ASBS in violation of the Ocean Plan.

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Storm Water Permit").

³ The Water Quality Control Plan for Ocean Waters of California, California Water Code §§ 13000 *et seq.*, §13170.2(a), adopted by the State Water Resources Control Board on January 20, 2005 and April 21, 2005, approved by the Office of Administrative Law on October 12, 2005, and approved by the U. S. Environmental Protection Agency on February 14, 2006. ("California Ocean Plan" or "Ocean Plan")

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to August 22, 2012, the date upon which Ventura Coastkeeper mailed its August 22 Notice. For violations based on information obtained by Ventura Coastkeeper after August 22, 2012, each additional separate violation of the CWA subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of this letter. These provisions of law authorize civil penalties of up to \$32,500 per day per violation for all Clean Water Act violations between October 23, 2012 and January 12, 2009, and \$37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Ventura Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties or substantially prevailing parties to recover costs, including attorneys' and experts' fees.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to sue. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2. This letter is being sent to you as the responsible owners, officers, and/or operators of GenOn, or as the registered agent for these individuals and entities. By this letter, pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, we hereby put the GenOn Facility Owners and/or Operators on notice that after the expiration of sixty (60) days from the date of this supplemental notice letter, we intend to file an enforcement action in Federal court against the GenOn Facility Owners and/or Operators for violations of the Storm Water Permit, the Clean Water Act, and the California Ocean Plan based on the information obtained and learned by Ventura Coastkeeper after August 22, 2012.

Under Section 505 of the CWA, "any citizen may commence a civil action on his own behalf" against any person who is "alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or State with respect to such a standard or limitation." 33 U.S.C. § 1365(a) and (a)(1). The CWA gives the federal district courts the authority to enforce such a standard or limitation, or order with respect to such standard and limitation, and to apply appropriate civil penalties under 33 U.S.C. § 1319(d). *See* 33 U.S.C. § 1365(a).

The August 22 Notice includes sections discussing the factual background; Ventura Coastkeeper's interest in this matter; the operation of the Facility by the GenOn Owners and/or Operators; the impact of storm water pollution on the Ormond Beach Wetlands, Ormond Beach Lagoon, Oxnard Drain # 3, which is the western arm of Mugu Lagoon ("Western Arm of Mugu

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Lagoon/Oxnard Drain #3”), Mugu Lagoon, the Mugu to Latigo ASBS, and the Pacific Ocean; the impact of the GenOn Owners and/or Operators activities at the Facility on the beneficial uses and aquatic life of the Ormond Beach Wetlands, Ormond Beach Lagoon, Western Arm of Mugu Lagoon/Oxnard Drain #3, Mugu Lagoon, Mugu to Latigo ASBS, and the Pacific Ocean; the statutory background; and the GenOn Owners and/or Operators violations of the CWA, Storm Water Permit, and Ocean Plan at the Facility. These sections are incorporated by reference are not repeated in this supplemental notice letter. The August 22 Notice provides more than adequate information to allow the GenOn Owners and/or Operators to identify the violations of CWA, Storm Water Permit, and Ocean Plan at the Facility set forth in the August 22 Notice, and to come into compliance with the CWA, Storm Water Permit, and Ocean Plan at the Facility via curing these violations. This October 23, 2012 notice of supplemental violations under the Federal Clean Water Act (“October 23 Notice”) provides additional information on violations from 2007 to present. Some of the claims set forth below provide further examples of violations and are illustrative of the pattern and practice of GenOn Owners and/or Operators violations of the CWA, Storm Water Permit, and Ocean Plan at the Facility, and do not constitute an exhaustive list of violations of the CWA, Storm Water Permit, and Ocean Plan noticed by August 22 Notice. These examples of violations are closely related to, and are of the same type of violations that have occurred since at least 2007. This October 23 Notice also sets forth additional violations of the CWA, Storm Water Permit, and Ocean Plan committed, and that continue to be committed, by GenOn Owners and/or Operators at the Facility.

As stated in the August 22 Notice, information currently available to Ventura Coastkeeper indicates GenOn Owners and/or Operators have not, and are not, complying with the substantive and procedural requirements of the CWA, the Storm Water Permit, and the California Ocean Plan. Specifically, according to information available to Ventura Coastkeeper, and as stated in the August 22 Notice, GenOn Owners and/or Operators 1.) have discharged and continue to discharge storm water containing pollutants, including iron and Total Suspended Solids (“TSS”), at levels in violation of Receiving Water Limitations (C)(1) and C(2) of the Storm Water Permit during every significant rain event occurring since at least October 2007; 2.) have discharged or continue to discharge polluted storm water with elevated levels of iron, TSS, and pH from the Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit during every significant rain event occurring since at least October 2007; 3.) have operated and are operating the Facility with an inadequately developed and/or implemented Storm Water Pollution Prevention Plan (“SWPPP”) in violation of Sections A(3) through A(10) of the Storm Water Permit since at least August 2007; and 4.) have operated and are operating the Facility with an inadequately developed and/or implemented Monitoring and Reporting Program (“MRP”) in violation of Sections B(3) through B(16) of the Storm Water Permit since at least August 2007. Furthermore, the GenOn Facility is discharging wastes including, but not limited to, pollutants from the Facility such as iron and TSS into and near the Mugu to Latigo Area of Special Biological Significance (“ASBS”) in violation of the Ocean Plan.

In addition to the claims in the August 22 Notice, according to additional information obtained by Ventura Coastkeeper after August 22, 2012, GenOn Owners and/or Operators: 1.) have demonstrated additional reasons why the Facility has an inadequately developed and/or

implemented Storm Water Pollution Prevention Plan ("SWPPP") in violation of Sections A(3) through A(10) of the Storm Water Permit; 2.) have demonstrated additional reasons why GenOn Owners and/or Operators have operated and are operating the Facility with an inadequately developed and/or implemented Monitoring and Reporting Program ("MRP") in violation of Sections B(3) through B(16) of the Storm Water Permit; and 3.) have demonstrated additional reasons why GenOn Owners and/or Operators have operated and are operating the Facility in violation of the Ocean Plan and Clean Water Act.

I. SUPPLEMENTAL NOTICE OF VIOLATIONS OF CLEAN WATER ACT AND STORM WATER PERMIT BASED ON ADDITIONAL INFORMATION OBTAINED BY VENTURA COASTKEEPER AFTER AUGUST 22, 2012.

Documents submitted to the State Water Resources Control Board ("State Board") and the Los Angeles Regional Water Quality Control Board ("Regional Board") by GenOn Owners and/or Operators indicate that storm water discharging from the Facility drains off the site from at least five discharge points identified on page ten of GenOn's Storm Water Pollution Prevention Plan ("SWPPP") for the Ormond Beach Generating Station dated March 14, 2009: D-1 (Water going out the back gate); D2-D4 (Vault east of the north basin); D5-D12 (Vault north of the maintenance shop); D13 (Vault west of the scrap yard); D14 (Vault east of the G.E. building). In addition, Coastkeeper investigators have also discovered another discrete discharge point: a storm water discharge channel at the Facility's gated entrance on Edison Drive ("hereinafter Discharge Point 6"), that discharges into the local storm sewer system on Edison Drive that flows into Western Arm of Mugu Lagoon/Oxnard Drain #3, which is hydrologically connected to Mugu Lagoon and the Mugu to Latigo ASBS. Comparing the SWPPP site map to Ventura Coastkeeper investigators' discovery, discharges from Discharge Point 6 appear to be previously unreported discharges that also have not been sampled or monitored as required by the Storm Water Permit.

Information available to Coastkeeper, including the Storm Water Pollution Prevention Plan ("SWPPP") for the industrial activities occurring at the GenOn Facility, as well as the Notice of Intent to obtain Storm Water Permit coverage ("NOI"), indicate that the following industrial operations are conducted at the GenOn Facility: electricity generation; maintenance and operation of electricity generating units including, but not limited to the Facility's two steam boiler electric generating units fueled by natural gas, the Facility's power block structures, the Facility's two tall emissions stacks, the Facility's once-through cooling infrastructure, the Facility's transformers, and the Facility's metal infrastructure associated with, part of, supporting, surrounding, and rising above the electric generating units, emissions stacks, and other infrastructure; the Facility's scrap yard; the Facility's maintenance areas; the Facility's vehicle and equipment maintenance; paint removal; construction activities; regeneration of in-line polishers resins; corrosion inhibition; and vehicular, equipment, and machinery traffic within the Facility. The GenOn Facility also stores hazardous waste such as waste oil, coolant, ammonium hydroxide, sodium nitrite, sodium hypochlorite, sulfuric acid, waste gasoline and diesel. In addition, Coastkeeper investigators have also discovered that the Facility's metal infrastructure associated with, part of, supporting, surrounding, and rising above the Facility's

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electric generating units, emissions stacks, and other infrastructure contain a significant amount of galvanized surfaces.

Review of the Facility's SWPPP, and visual observations conducted by Coastkeeper indicate that Facility's industrial operations, including a significant portion of the Facility's industrial operations and infrastructure that have galvanized surfaces, are conducted outdoors without adequate cover or protection from contact with precipitation. The exposure of pollutants associated with these industrial activities to precipitation combined with the Facility's failure to adequately treat its storm water discharges, results in storm water carrying away pollutants generated from the Facility's industrial operations as storm water flows into the Ormond Beach Wetlands, Ormond Beach Wetlands Lagoon, Western Arm of Mugu Lagoon/Oxnard Drain #3, Mugu Lagoon, the Mugu to Latigo ASBS, and the Pacific Ocean from at least the six discharge points at the GenOn Facility as detailed in the August 22 Notice and this October 23, 2012 supplemental notice.

Information available to Coastkeeper also indicates that oil and grease, metal particles, and other pollutants have been and continue to be tracked throughout the GenOn Facility operations area. These pollutants accumulate at the storm water discharge points, the Facility grounds, the parking lot, and the driveway leading onto South Edison Drive. As a result, sediment, dirt, oil and grease, metal particles and other pollutants are tracked off-site by trucks and vehicles leaving the GenOn Facility via staging areas and driveways.

Sources of pollutants associated with the industrial activities at the GenOn Facility include, but are not limited to electricity generation; maintenance and operation of electricity generating units including, but not limited to the Facility's two steam boiler electric generating units fueled by natural gas, the Facility's two tall emissions stacks, the Facility's power block structures, the Facility's once-through cooling infrastructure, the Facility's transformers, and the Facility's metal infrastructure associated with, part of, supporting, surrounding, and rising above the electric generating units, emissions stacks, and other infrastructure; the Facility's scrap yard; the Facility's maintenance areas; the Facility's vehicle and equipment maintenance; paint removal; construction activities; regeneration of in-line polishers resins; corrosion inhibition; and vehicular, equipment, and machinery traffic within the Facility; parking areas; shipping and receiving areas; loading and unloading areas; driveway areas; maintenance areas; the office building; and on-site material handling equipment such as forklifts, and trucks. In addition, Coastkeeper investigators have also discovered that the Facility's metal infrastructure associated with, part of, supporting, surrounding, and rising above the Facility's electric generating units, emissions stacks, and other infrastructure contain a significant amount of galvanized surfaces.

The pollutants associated with operations at the GenOn Facility include, but are not limited to: iron contained in the Facility's uncovered and exposed industrial infrastructure; zinc contained in and on the Facility's uncovered and exposed galvanized metal industrial infrastructure; other toxic metals; oil and grease; fuel and fuel additives; total suspended solids ("TSS"); coolant; pH-affecting substances; toxic substances associated with the Facility's

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operations such as ammonium hydroxide, sodium nitrite, sodium hypochlorite, sulfuric acid; and fugitive and other dust, dirt, and debris.

Visual observations, satellite and overhead imagery, the Facility's SWPPP, and the Facility's own monitoring results indicates that the GenOn Facility Owners and/or Operators have not properly developed and/or implemented best management practices ("BMPs") at the GenOn Facility sufficient to prevent the exposure of pollutants to storm water and the subsequent discharge of polluted storm water from the GenOn Facility during rainstorm events. Consequently, during rain events, storm water carries pollutants from the GenOn Facility's industrial operations areas; industrial infrastructure; retention basins; ground; floors; equipment; scrap areas; shipping and receiving areas; and other sources into the Ormond Beach Wetlands; the Ormond Beach Wetlands Lagoon; the Western Arm of Mugu Lagoon/Oxnard Drain #3; the main body and other arms of Mugu Lagoon; the local storm sewer system on Edison Drive which flows into the Western Arm of Mugu Lagoon/Oxnard Drain #3; the Mugu to Latigo ASBS; and the Pacific Ocean. These illegal discharges negatively impact the Ormond Beach Wetlands, the Ormond Beach Wetlands Lagoon, Mugu Lagoon, the Western Arm of Mugu Lagoon/Oxnard Drain #3, the Mugu to Latigo ASBS, the Pacific Ocean, Ormond Beach, and Coastkeeper's members' use and enjoyment of these waters, wetlands, and Ormond Beach.

Failure to comply with the Storm Water Permit, and the resulting discharges of pollutants from the GenOn Facility, are violations of the Storm Water Permit, the Clean Water Act, and the California Ocean Plan. Besides violating the law, these failures have resulted in and continue to contribute to the degradation of the ecological, cultural, municipal, domestic, and recreational resources of the Ormond Beach Wetlands, the Ormond Beach Wetlands Lagoon, Mugu Lagoon, the Western Arm of Mugu Lagoon/Oxnard Drain #3, the Mugu to Latigo ASBS, the Pacific Ocean, and Ormond Beach.

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. *See* 33 U.S.C. §1311(a). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 126(c)(1); Storm Water Permit, Fact Sheet p. VII. A failure to comply with or obtain coverage under the Storm Water Permit is a violation of the Clean Water Act. Storm Water Permit, Section C(1).

The additional Clean Water Act, Storm Water Permit, and Ocean Plan violations described below, not included in the August 22 Notice, are based on information obtained by Ventura Coastkeeper after August 22, 2012. In addition, the information provided below further demonstrates that GenOn Owners' and/or Operators' violations of the Clean Water Act, Storm Water Permit, and Ocean Plan at the Facility that are included in the August 22 Notice are persistent and ongoing. As explained further below, information available to Ventura Coastkeeper indicates that the GenOn Owners and/or Operators have failed and continue to fail to comply with the substantive and procedural provisions of the Storm Water Permit. For the additional Clean Water Act, Storm Water Permit, and Ocean Plan violations described below, not included in the

August 22 Notice, Ventura Coastkeeper places the GenOn Owners and/or Operators on notice of their violations of the Storm Water Permit, Ocean Plan, the Clean Water Act for each day of violation occurring at the Facility from October 23, 2012 to the present.

A. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan ("SWPPP")

In addition to the reasons listed in the August 22 Notice as to why the GenOn Owners and/or Operators have not developed and/or implemented a SWPPP for the Facility that meets the requirements of the Storm Water Permit, GenOn Owners and/or Operators SWPPP for the Facility does not meet the requirements of the Storm Water Permit because the Facility's SWPPP has failed to specifically identify, and thus failed to address and identify, all potential pollutant sources at the Facility, including iron contained in the Facility's metal industrial infrastructure exposed to contact with precipitation, and including zinc contained in and on the Facility's galvanized metal industrial infrastructure exposed to contact with precipitation in violation of Sections A(6), A(7), and A(8) of the Storm Water Permit. As in this October 23 Notice, review of the Facility's SWPPP, Coastkeeper investigations, and visual observations conducted by Coastkeeper indicate that a significant portion of the Facility's industrial infrastructure and operations have galvanized surfaces which contain zinc, and do not have adequate cover or protection from contact with precipitation.⁴ Because zinc is a likely pollutant found in and on the surface of the Facility's galvanized infrastructure and operations, both of which lack adequate protection from contact with precipitation, GenOn's Owners and/or Operators have failed to identify, and thus failed to address and identify, all potential pollutant sources and necessary BMPs/Control Practices in the SWPPP as required by Section A(6) of the Storm Water Permit. In addition, GenOn Owners and/or Operators SWPPP for the Facility does not meet the requirements of the Storm Water Permit because the Facility's SWPPP fails to address and identify necessary non structural and structural BMPs/Control Practices to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges, such as iron and zinc, in violation of Sections A(6), A(7), and A(8) of the Storm Water Permit. In addition, GenOn Owners and/or Operators SWPPP fails to include a site map for the Facility that includes all of the Facility structural control measures that affect storm water discharges, in violation of Section A(4) of the Storm Water Permit.

Furthermore, GenOn's Owners and/or Operators have failed to comply with Section A(5) of the Storm Water Permit, because the SWPPP does not contain a sufficiently complete and detailed list of all significant materials handled and stored at the site such as zinc, galvanization products, galvanized materials, and galvanized metal surfaces present at the Facility. Without a reasonably specific identification of potential pollutants such as zinc and iron, it is difficult, if not impossible, to assess whether the BMPs identified in the Facilities SWPPP are effective. Specific types of pollutants may require different BMPs or have different BAT/BCT. In addition, and as previously detailed in the August 22 Notice, GenOn Owners and/or Operators have failed to comply with Section A(8)(b) of the Storm Water Permit because the Facility's history of storm water discharges with iron and TSS concentrations that exceed EPA Benchmarks, as evidenced by

⁴ In addition, as detailed in the August 22 Notice, a significant portion of the Facility's infrastructure and operations contains iron surfaces, and does not have adequate cover or protection from contact with precipitation.

the Facility's own storm water monitoring data,⁵ requires the SWPPP to consider effective structural BMPs because the non structural BMPs and other BMPs proposed or implemented as set forth in the Facility's SWPPP have not been effective in meeting U.S. EPA Benchmarks⁶.

Further, information available to Ventura Coastkeeper indicates that GenOn Owners and/or Operators failed to comply with Section A(4) and A(6) of the Storm Water Permit because Discharge Point 6, specifically identified as a discrete discharge point with a discharge channel for the first time in this October 23 Notice, is not included in the SWPPP Map and nor is it described in the SWPPP.

Every day the GenOn Owners and/or Operators operate the Facility with an inadequately developed and/or implemented SWPPP is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).⁷ The GenOn Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements every day since at least August 22, 2007. These violations are ongoing and the GenOn Owners and/or Operators will continue to be in violation every day that they fail to revise, develop, and/or implement an adequate SWPPP for the Facility. Ventura Coastkeeper will include additional violations when information becomes available. For all violations of the Clean Water Act and Storm Water Permit described above not included in the August 22 Notice, the GenOn Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 23, 2007. For all violations of the Clean Water Act and Storm Water Permit described above also included in the October 23 Notice, the GenOn Owners and/or Operators are subject to civil penalties for the violations occurring since at least August 22, 2007.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate MRP by October 1, 1992 or prior to the commencement of industrial activities at a facility. The objective of the MRP is to ensure that storm water discharges are in compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. Storm Water Permit, Section B(2). The MRP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and are evaluated and revised whenever appropriate. *Id.*

Additional observations of the conditions at the Facility since the August 22 Notice that demonstrate that the GenOn Owners and/or Operators have not developed and/or implemented an adequate MRP that meets the requirements of the Storm Water Permit include the failure of the GenOn Owners and/or Operators to include storm water sampling and storm water discharge

⁵ See August 22 Notice.

⁶ See Multi-Sector Permit (2008), Fact Sheet, p. 106; *see also*, Storm Multi-Sector Permit, 65 Federal Register 64839 (2000).

⁷ See Exhibit A in the August 22 Notice (listing days of significant rain events).

monitoring requirements in the MRP from Discharge Point 6⁸ as required by Section B of the Storm Water Permit in violation of Sections B(3)(4)(5) and (7) of the Storm Water Permit⁹. In addition, GenOn Owners and/or Operators have not developed and/or implemented an adequate MRP in violation of Section B(5)(c) of the Storm Water Permit because the GenOn Owners and/or Operators failed to analyze the storm water samples for the 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 wet season for all toxic chemicals and other pollutants likely to be present in significant quantities in the storm water discharges, such as zinc (see Section I and II.A, of this October 23 Notice), which likely to be present in significant quantities in the Facility's storm water discharges considering zinc is contained in and on the surfaces of the Facility's significant amount of galvanized industrial infrastructure that is exposed to and comes in contact with precipitation.

Thus, the GenOn Owners and/or Operators have violated the Storm Water Permit and the Clean Water Act by failing to sample and report as required at the Facility. Every day that the GenOn Owners and Operators operate the Facility with an inadequately developed and/or implemented MRP is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).¹⁰ The GenOn Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's MRP requirements every day since at least August 22, 2007. These violations are ongoing and the GenOn Owners and/or Operators will continue to be in violation every day that it fails to revise, develop, and/or implement an adequate MRP for the Facility. Ventura Coastkeeper will include additional violations when information becomes available. For all violations of the Clean Water Act and Storm Water Permit described above not included in the August 22 Notice, the GenOn Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 23, 2007. For all violations of the Clean Water Act and Storm Water Permit described above also included in the August 22 Notice, the GenOn Owners and/or Operators are subject to civil penalties for the violations occurring since at least August 22, 2007.

B. Discharging Waste from the GenOn Facility in Violation of the Ocean Plan and CWA Sections 301(a) and 402(p) (Violations of 33 U.S.C. §§ 1311, 1342(p))

1.) The Ocean Plan Requirements and Areas of Special Biological Significance

The California Water Code ("CWC") requires the State Board to create a water quality control plan for California's ocean waters ("Ocean Plan"). Cal Water Code § 13170.2(a). The State Board has adopted the Ocean Plan as Clean Water Act water quality standards for California's ocean waters, which like the Basin Plans adopted by Regional Boards for California's inland waters, includes numeric and narrative water quality standards/criteria intended to protect designated uses including recreation, fishing, and preservation of marine

⁸ Discharge Point 6 was specifically identified as a discrete discharge point with a discharge channel for the first time in this October 23 Notice.

⁹ See August 22 Notice for description of the requirements of Sections B(3)(4)(5) and (7) of the Storm Water Permit, Exhibit A in the August 22 Notice (listing days of significant rain events), and Exhibit B in the August 22 Notice (listing days of qualifying rain events during business hours).

¹⁰ See Exhibit A in the August 22 Notice (listing days of significant rain events).

habitat under the CWA. *Id.*; Ocean Plan at iii., 1-23; CWA §303(a)-(c). The Ocean Plan designates thirty four areas off the coast of California as areas of special biological significance (“ASBS”). Ocean Plan, at 39-40. These areas have been re-designated State Water Quality Protection Areas, but are still referred to as ASBSs.¹¹ The Mugu Lagoon ASBS in Ventura County and Los Angeles County begins at Mugu Lagoon (Laguna Point) and ends at Latigo Point in the City of Malibu in the County of Los Angeles (the “Mugu to Latigo ASBS”). Like all other ASBSs, the Mugu to Latigo ASBS was determined to be a unique area that deserves special protection. For example, Mugu to Latigo ASBS contains five major sub-tidal habitat types, including extensive sub-tidal reefs.

The limitations set forth in the Ocean Plan are intended to protect the designated beneficial uses of ASBSs. The Ocean Plan includes a combination of numeric and narrative water quality standards that apply to discharges for bacterial, physical, chemical, and biological characteristics.¹² The Ocean Plan contains an extensive list of numeric standards for chemical characteristics, which includes zinc with a daily maximum of 80 ug/L and an instantaneous maximum of 200 ug/L.¹³ The standard in the Ocean Plan for protection of biological characteristics requires marine communities, including vertebrates, invertebrates, and plant species, to remain untarnished.

Because of the “intrinsic value” and fragile nature of ASBSs, the State Water Resources Control Board has determined that in order to preserve and enhance the Beneficial Use of ASBSs, the water quality objectives in the Ocean Plan shall prohibit the discharge of any pollutants to an ASBS. Specifically, the Ocean Plan states that “[w]aste shall not be discharged to areas designated as being of special biological significance.” Ocean Plan, Section III(E), Section III(I). Discharges of waste near ASBSs are also prohibited. *Id.* Waste is “a discharger’s total discharge, of whatever origin, i.e., gross, not net, discharge.” Appendix I, Ocean Plan. Thus, the Ocean Plan’s water quality criteria prohibit discharges of waste, of whatever origin, into or near any ASBS. Ocean Plan, at 20, 27.

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant, by any person, from any point source into the waters of the United States, including the waters of the contiguous zone or the ocean, unless the discharge complies with various enumerated sections of the CWA. Among other things, section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued by the federal Environmental Protection Agency (“EPA”) or an EPA delegated State permitting authority pursuant to section 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342, *id.* § 1362(12)(A),(7); 40 C.F.R. § 122.2.

¹¹ According to State Water Board Resolution No. 2005-0035, the State Water Quality Protection Areas are protected by the same laws and regulations as ASBSs.

¹² See Ocean Plan, Section II (Water Quality Objectives)

¹³ See Ocean Plan, Section II (Water Quality Objectives)

The GenOn Facility's discharges of waste, including iron, zinc, and TSS in any amount violate the Ocean Plan's discharge prohibition and §301(a) of the CWA; when the discharges also exceed the Ocean Plan's numeric water quality standards, they constitute a separate violation of the Ocean Plan and §301(a) of the CWA. Therefore, the GenOn Facility's discharges of waste containing pollutants such as iron or zinc in any amount into or near the Mugu to Latigo ASBS, containing iron or zinc levels exceeding the U.S. Environmental Protection Agency Benchmarks, or containing zinc in concentrations exceeding the Daily or Instantaneous Maximum numeric water quality standards in the Ocean Plan violate the Ocean Plan and the CWA.

2.) The GenOn Facility's Violations of the Ocean Plan's Waste Discharge Prohibition into the Mugu Lagoon to Latigo Point ASBS and the Clean Water Act

Coastkeeper is informed and believes, and thereon alleges, as demonstrated by levels of iron concentrations in the Facility's storm water discharges evidenced in Defendants' own monitoring reports to the Regional Board (See Table A to the August 22 Notice), and as evidenced by the zinc historically and currently contained in and on the Facility's significant amount of galvanized uncovered and exposed metal industrial infrastructure that comes in contact with precipitation, that since at least August 2007, during each significant rain event, dates of which are identified in Exhibit A to the August 22 Notice:

- 1.) The GenOn Facility has discharged, and continues to discharge, waste containing pollutants such as iron and zinc in the Facility's storm water into the Western Arm of Mugu Lagoon/Oxnard Drain #3, which is part of Mugu Lagoon, and is adjacent to, near, and flows into the Mugu to Latigo ASBS, in violation of the California Ocean Plan's waste discharge prohibitions¹⁴ and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a), and 33 U.S.C. § 1342(p).
- 2.) The GenOn Facility has discharged, and continues to discharge waste containing iron, zinc, or other metals exceeding U.S. Environmental Protection Agency Benchmarks, CTR criteria, the Daily or Instantaneous Maximum concentrations in the Ocean Plan, or other applicable water quality standards in violation of the California Ocean Plan¹⁵, its waste discharge prohibitions, and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a), and 33 U.S.C. § 1342(p).
- 3.) The GenOn Facility has discharged, and continues to discharge, waste containing iron and zinc in concentrations that impair human health, aquatic species, marine life, avian species, and the environment, in violation of the California Ocean Plan¹⁶, its waste discharge prohibitions, and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a), and 33 U.S.C. § 1342(p).

¹⁴ Ocean Plan, Section II, Section III(E), Section III(I).

¹⁵ *Id.*

¹⁶ *Id.*

Thus, the GenOn Facility has violated the California Ocean Plan¹⁷ and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a), and 33 U.S.C. § 1342(p) during each significant rain event that since at least August 2007. Every day the GenOn Facility violates of the California Ocean Plan¹⁸ and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §1311(a), and 33 U.S.C. § 1342(p), is a separate and distinct violation of the Ocean Plan, California Water Code, and Clean Water Act. These violations are ongoing, and will continue each day contaminated storm water containing waste such as iron, zinc, or other metals is discharged into and near the Mugu to Latigo ASBS from the GenOn Facility.

For all violations of the Ocean Plan and Clean Water Act described above not included in the August 22 Notice, the GenOn Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 23, 2007. For all violations of the Clean Water Act and Ocean Plan described above also included in the August 22 Notice, the GenOn Owners and/or Operators are subject to civil penalties for the violations occurring since at least August 22, 2007. In light of the GenOn Facility's history of violations and the nature of the violations, the GenOn Facility will continue to violate the Ocean Plan's requirements in the future unless and until they are enjoined from doing so. Ventura Coastkeeper will include additional violations when information becomes available.

II. CONCLUSION

Upon expiration of the 60-day notice period for the supplemental claims, Ventura Coastkeeper intends to file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations based on this information obtained by Ventura Coastkeeper after August 22, 2012. In addition to the violations set forth above in this October 23 Notice and in the August 22 Notice, this notice covers all violations of the Clean Water Act, the Storm Water Permit, and the Ocean Plan by GenOn Owners and/or Operators at the Facility evidenced by information that becomes available to Ventura Coastkeeper after the date of this letter.

As stated in the August 22 Notice, Ventura Coastkeeper's Staff Attorney is representing it in this matter. Please direct all communications to Ventura Coastkeeper's Staff Attorney at:

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¹⁷ *Id.*

¹⁸ *Id.*

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During the 60-day notice period, Ventura Coastkeeper is interested in discussing effective remedies for the violations described in this supplemental notice letter and the August 22 Notice. Although Ventura Coastkeeper is always interested in avoiding unnecessary litigation, Ventura Coastkeeper does not intend to delay the filing of a complaint in federal court beyond the requisite notice period.

Sincerely,



Mati Waiya
Wishtoyo Foundation & Ventura
Coastkeeper Executive Director

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